

★ MAR 20 2017 ★

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
ANDERSON JOSEPH,

Plaintiff,

-against-

SOCIAL SECURITY OFFICE,

Defendant.  
-----X

LONG ISLAND OFFICE

ORDER  
16-CV-3377 (JFB) (GRB)

JOSEPH F. BIANCO, District Judge:

Before the Court is a Report and Recommendation (“R&R,” ECF No. 10) from Magistrate Judge Brown recommending that the Court grant defendant’s motion to dismiss (ECF No. 5). The R&R instructed that any objections to the R&R be submitted within fourteen (14) days of service of the R&R. (*See* R&R, dated February 28, 2017, at 15.) Defendant served the R&R on March 2, 2017 (*see* ECF No. 11), and accordingly, the date for filing any objections has since expired. Plaintiff has not filed any objection to the R&R, and for the reasons set forth below, the Court adopts the thorough and well-reasoned R&R in its entirety and grants defendant’s motion to dismiss plaintiff’s complaint.

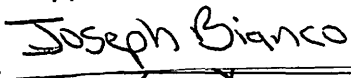
Where there are no objections, the Court may adopt the report and recommendation without *de novo* review. *See Thomas v. Arn*, 474 U.S. 140, 150 (1985) (“It does not appear that Congress intended to require district court review of a magistrate’s factual or legal conclusions, under a *de novo* or any other standard, when neither party objects to those findings.”); *see also Mario v. P & C Food Mkts., Inc.*, 313 F.3d 758, 766 (2d Cir. 2002) (“Where parties receive clear notice of the consequences, failure timely to object to a magistrate’s report and recommendation operates as a waiver of further judicial review of the magistrate’s decision.”); *cf.* 28 U.S.C. § 636(b)(1)(c) and Fed. R. Civ. P. 72(b)(3) (requiring *de novo* review after objections). However, because the failure

to file timely objections is not jurisdictional, a district judge may still excuse the failure to object in a timely manner and exercise its discretion to decide the case on the merits to, for example, prevent plain error. *See Cephas v. Nash*, 328 F.3d 98, 107 (2d Cir. 2003) (“[B]ecause the waiver rule is non jurisdictional, we ‘may excuse the default in the interests of justice.’” (quoting *Thomas*, 474 U.S. at 155)).

Although plaintiff has waived any objection to the R&R and thus *de novo* review is not required, the Court has conducted a *de novo* review of the R&R in an abundance of caution. Having conducted a review of the full record and the applicable law, and having reviewed the R&R *de novo*, the Court adopts the findings and recommendations contained in the well-reasoned and thorough R&R in their entirety.

Accordingly, it is hereby ordered that defendant’s motion to dismiss plaintiff’s complaint (ECF No. 5) is granted, and plaintiff is granted leave to file an Amended Complaint. The Court notes that the Amended Complaint must address the sovereign immunity issue, exhaustion issue, and the other pleading defects identified by Magistrate Judge Brown in the R&R. If plaintiff intends to pursue his claims, he may file an Amended Complaint within thirty (30) days of this Order. Plaintiff is warned that if he fails to file an Amended Complaint within thirty days, the Court shall dismiss this case with prejudice, without further notice, for failure to prosecute, pursuant to Rule 41(b) of the Federal Rules of Civil Procedure.

SO ORDERED.

  
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JOSEPH E. BIANCO  
UNITED STATES DISTRICT JUDGE

Dated: March <sup>20</sup>, 2017  
Central Islip, NY